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IN THE SUPREME COURT OF PENNSYLVANIA,
EASTERN DISTRICT.

WILLIAM A. FIELD,

Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,

ex relatione Jonathan K. Krewson,

Defendant in Error.

Writ of Error

To the Court of Common Pleas of Schuylkill County,

Of December Term, 1858, No. 693.

NAMES OF THE PARTIES AS THEY STOOD ON THE RECORD OF
THE COURT BELOW.

THE COMMONWEALTH OF PENNSYLVANIA,

ex relatione Jonathan K. Krewson,

vs.

WILLIAM A. FIELD.

Dec. Term, 1858.

No. 693,

Quo Warranto.

HISTORY OF THE CASE.

On the thirtieth day of November, A. D. 1858, a suggestion for a writ of *quo warranto*, in the name of the Commonwealth of Pennsylvania, *ex relatione* Jonathan K. Krewson, private relator, against William A. Field, was presented to the Court of Common Pleas of Schuylkill County, setting forth, among other things, that the said William A. Field had usurped and intruded himself into the office of County Superintendent of Common Schools

for said county of Schuylkill, to the great loss, hindrance and injury of the said Jonathan K. Krewson, the relator, who claimed to have been duly elected and commissioned, and to be rightfully entitled to have and enjoy the said office; and upon the said suggestion and complaint, the said Court directed a writ of *quo warranto* to issue against the said William A. Field, to show by what authority he claimed to exercise, use and enjoy, the said office of County Superintendent.

The writ of *Quo Warranto* was duly issued and served upon the said defendant, William A. Field, who upon the eighteenth day of December, A. D. 1858, appeared in Court, and answered to the said suggestion, and claimed that the said relator, Jonathan K. Krewson, before the time of the filing of his said suggestion and complaint, had been lawfully removed from the said office of County Superintendent, by the Superintendent of Common Schools for the Commonwealth, and himself, the said William A. Field, lawfully appointed and commissioned by said State Superintendent, to fill the vacancy occasioned by said removal, and that he had accepted the said appointment and commission, and entered upon the duties of said office, and was entitled to hold the same until his successor was duly chosen and qualified.

On the same day, the counsel for the complainant filed a demurrer to the answer, and issue was joined by the defendant, upon which the Court ordered judgment in favor of the plaintiff, and the defendant took a writ of error.

ERROR ASSIGNED.

The judgment of the Court in favor of the plaintiff was erroneous, and judgment should have been entered in favor of the defendant.

SUGGESTION.

To the Honorable the Judges of the Court of Common Pleas, for the County of Schuylkill.—Be it remembered that at a Court of Common Pleas held the thirtieth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, in and for said county, comes Jonathan K. Krewson, private relator, and on behalf of the said Commonwealth gives the said Court here to know and be informed, That in pursuance of the several provisions of an Act of the General Assembly of this Commonwealth, approved the 8th day of May, 1854, entitled “An Act for the regulation and continuance of a system of Education by Common Schools,” Your relator, Jonathan K. Krewson was duly elected on the 1st Monday of June, 1854, by the School Directors of the several School Districts for the County of Schuylkill in Convention assembled according to law, “The County Superintendent” for the three succeeding school years, terminating the 1st Monday of June, 1857, which election was in pursuance of the provisions of said Act, duly certified by the President and Secretary of said Convention to the Superintendent of Common Schools for the Commonwealth of Pennsylvania. Whereupon the said Superintendent of Common Schools, duly commissioned your relator the said Jonathan K. Krewson, “The County Superintendent” for the County of Schuylkill, for the said period of three years, for which he had been elected as aforesaid—and during which said term your relator, the said Jonathan K. Krewson performed and discharged all the duties of said office of the “County Superintendent,” for said county of Schuylkill, and received the salary and emoluments thereto pertaining. That afterwards, to wit: On the 1st Monday of May, 1857, your relator, the said Jonathan K. Krewson, was again chosen in manner and form aforesaid, by the School Directors of the several School Dis-

tricts for the said county in Convention assembled as aforesaid, as "The County Superintendent" for said county for the next three succeeding school years, commencing on the first Monday of June, 1857, and terminating on the first Monday of June, 1860.

That said last mentioned election of your relator, said Jonathan K. Krewson, was duly certified by the President and Secretary of said last mentioned Convention to the Superintendent of Common Schools for said Commonwealth, viz: to H. C. Hickok, Esq., who was then and there duly acting in the said office of the Superintendent of Common Schools for said Commonwealth. Whereupon the said H. C. Hickok, as the said Superintendent of Common Schools did on the———day of June, 1857, duly commission your relator, the said Jonathan K. Krewson, to hold the said office of "The County Superintendent" for said county of Schuylkill. That in pursuance of said last mentioned election and commission aforesaid, your relator, the said Jonathan K. Krewson, did immediately after his receipt of the said last mentioned commission, assume and enter upon the duties of the said office of "The County Superintendent" for said county, and has from the period of the receipt of his said commission (which was within five days after the date thereof,) up until the second day of November, 1858, discharged and performed the duties of said office, when he received from H. C. Hickok, Superintendent of Common Schools, a communication of the purport and tenor following—that is to say :

PENNSYLVANIA,

Department of Common Schools,

HARRISBURG, Nov. 2d, 1858.

Sir:—You are hereby removed from the office of County Superintendent, for "neglect of duty and incompetency." You will immediately deliver to your successor, W. A. Field, Esq., the books of "County Certificates," and

“Provisional Certificates” in your hands, and the marginal references or “duplicates” of all certificates, of either kind, issued by you since the first Monday in June, 1857; together with all other official records or documents in your possession, or under your control, taking his receipt for the same in detail, upon the presentation of which at this Department, your arrearages of salary and Express charges will be adjusted.

Your obedient servant,

H. C. HICKOK,

Supt. Com. Schools.

To J. K. KREWSON, Esq., Minersville, Schuylkill Co., Pa.

That your relator, the said Jonathan K. Krewson, had not received any previous notice whatever, from the said H. C. Hickok, Superintendent as aforesaid, that there had been made against him, your relator, the said Jonathan K. Krewson, any charge or allegation of either “incompetency” or “neglect of duty” in his said office of “The County Superintendent” for said county of Schuylkill, nor, as your relator, the said Jonathan K. Krewson, avers and believes, had any such charge been made, nor had he any time received from the said H. C. Hickok, any specification of any fact, mistake or act of commission or omission whereupon any such charge as “incompetency” or “neglect of duty” as aforesaid, had been, or could have been based, but that the aforesaid attempt at the removal of your relator, the said Jonathan K. Krewson, from his said office of “The County Superintendent” as aforesaid, was wholly without charge, specification, trial, or hearing of any kind whatever, to which your relator, the said Jonathan K. Krewson, had or could have been a party. Your relator, the said Jonathan K. Krewson, further represents that by the 59th section of the aforesaid Act of Assembly it is made one of the duties of “The Superintendent of Common Schools” for said Commonwealth to

“give advice, explanation, construction or information to the district officers, and to citizens, relative to the Common School law, &c.” That the 64th section of said act, gives to the said Superintendent of Common Schools the only power of removal of a County Superintendent which he possesses, and is viz:—“He shall have the power of removing any County Superintendent for neglect of duty, incompetency or immorality, and to appoint another in his stead until the next triennial Convention of Directors.”

That the said H. C. Hickok as Superintendent as aforesaid, has under his authority aforesaid given a “construction” to the last quoted section of said act, upon his aforesaid power of removal, viz: “*Removal from office.*—County Superintendents can be removed from office for *specified causes*. Superintendents, however, against whom accusations are preferred, have a right to a fair hearing upon the charges and testimony against them, if they desire it.” Which said decision of the said H. C. Hickok, Superintendent as aforesaid is published at the expense of the Commonwealth, on page 53, “Decision” 149, of a pamphlet distributed by him in 1857 among the County Superintendents and others entitled “The Common School Law of Pennsylvania and Decisions of the Superintendents, with explanatory Instruction and forms,” “Prepared by Henry C. Hickok, Superintendent.” That the said Henry C. Hickok, has violated the Act of Assembly, and the “construction” given by him to said 64th section thereof in the following particulars.

That he has undertaken to remove your relator, the said Jonathan K. Krewson, without any (previously) specified cause—without any “accusation preferred” without a *fair hearing*, without any hearing of any kind, and without any testimony to sustain any charges.

Your relator, the said Jonathan K. Krewson, further represents that immediately after the receipt of the said communication, from the said H. C. Hickok, Superinten-

dent as aforesaid, your relator, the said Jonathan K. Krewson, repaired forthwith to Harrisburg and called upon the said H. C. Hickok, Superintendent as aforesaid, at the office or department of the Superintendent of Common Schools, and then and there asked of the said H. C. Hickok, the specification of "incompetency" or "neglect of duty," for which the attempted removal as aforesaid had been made—that the said H. C. Hickok, Superintendent as aforesaid utterly refused to state or make known to your relator, the said Jonathan K. Krewson, any specifications to sustain either of said allegations. Your relator, the said Jonathan K. Krewson, then asked of the said Henry C. Hickok, as Superintendent as aforesaid, a hearing upon both or either of the aforesaid charges, and upon any specifications tending or intending to sustain the same or either of them. This request, the said H. C. Hickok, Superintendent aforesaid, utterly and wholly refused to do—whereupon your relator, the said Jonathan K. Krewson, called the attention of the said H. C. Hickok, Superintendent as aforesaid, to his aforesaid decision, whereupon the said H. C. Hickok, Superintendent as aforesaid, alleged the same was not law, and appearing excited, notified your relator, the said Jonathan K. Krewson, that he was unwilling to be "catechised" further.—And your relator, the said Jonathan K. Krewson alleges that he still claims to be rightfully "The County Superintendent" for said county, but, that so it is, that from the aforesaid 2d November inst., the said W. A. Field, Esq., has usurped and intruded himself into the said office of "The Co. Supt," for said county, and without any right or lawful authority therefor, and still continues to usurp and intrude into and claim to exercise the rights and duties and receive the fees and emoluments to said office belonging and appertaining, to the great loss, hindrance and injury of your relator, the said Jonathan K. Krewson.

Thereupon the said Commonwealth by your relator, the

said Jonathan K. Krewson, makes a suggestion and complaint herein and for due process of law against the said William A. Field, in this behalf to be made, to answer by what warrant he claims to have, use, exercise and enjoy the said office.

J. K. KREWSON.

Schuylkill County, ss.

Jonathan K. Krewson being duly sworn says, that the above suggestion as to all matters of fact contained therein, is true, to the best of his knowledge and belief.

Sworn and subscribed before me, this 30th day of Nov. A.D. 1858. (signed)	}	J. K. KREWSON.
		D. H. SHOENER,
		<i>Prothonotary.</i>

WRIT OF QUO WARRANTO.

Schuylkill County, ss.



THE COMMONWEALTH OF PENNSYLVANIA, to the
Sheriff of Schuylkill County, Greeting:

We command you, that you summon William A. Field, so that he be and appear before our Court of Common Pleas for the County of Schuylkill, to be holden at Pottsville for said County, on Friday the 17th day of December, 1858, at 10 o'clock, A. M., and then and there to show by what authority he claims to exercise, use and enjoy the office of "The County Superintendent" (of Common Schools) for the County of Schuylkill, and have you then and there this writ.

WITNESS the Hon. C. W. Hegins, Esq., President of our said Court, at Pottsville, this thirtieth day of November, A.D., 1858.

DANL. H. SHOENER, *Proth'y,*
per S. C. Harris.

ANSWER OF DEFENDANT.

THE COMMONWEALTH OF PENNSYLVANIA,

*ex relatione Jonathan K. Krewson,**vs.*

WILLIAM A. FIELD.

*In the Court of Common Pleas of Schuylkill County.**Dec. Term, 1858.**No. 693,**Quo Warranto.*

THE ANSWER OF THE DEFENDANT, WILLIAM A. FIELD, TO THE SUGGESTION FILED IN THIS CASE.

The defendant answers and says, that he has been informed and believes that the relator, Jonathan K. Krewson, was, on the first Monday of May, 1857, duly chosen by the School Directors of Schuylkill County, as "The County Superintendent" for the term of three years from the first Monday of June, A.D. 1857, and was commissioned by the State Superintendent as such County Superintendent.

The said defendant has also been informed and believes, that the said relator, under his aforesaid commission, did assume and enter upon the duties of his said office, but that he did not perform the said duties to the satisfaction of the Superintendent of Common Schools for the Commonwealth, so that the said Superintendent being of opinion that the said relator had neglected his duty as County Superintendent, and was incompetent to perform the duties of said office, did on the second day of November, A.D. 1858, remove the said relator from the office of County Superintendent aforesaid, and did thereupon duly appoint and duly commission the defendant to fill the vacancy occasioned by said removal. A copy of the removal, of the appointment and commission, as they appear of record in the office of the State Superintendent, is herewith attached, marked "A."

The defendant further answering, says, that he neither denies nor admits that part of the suggestion, wherein it is set forth that the said relator had not been notified previous to his removal, of any charge or allegation of incompetency or neglect of duty, and that the removal was without charge, specification, trial or hearing, but he distinctly avers that the State Superintendent is fully authorized by the laws of the Commonwealth to remove a County Superintendent, "for neglect of duty, incompetency or immorality, and to appoint another in his stead until the next triennial Convention of Directors," and that the said State Superintendent being the sole judge of the neglect, incompetency or immorality, may lawfully make the removal whenever he is satisfied of the existence of either of the causes aforesaid, and that he is alone responsible for the manner in which he shall perform his duty in this respect.

The defendant alleges in this his answer,

1st, That the State Superintendent of Common Schools, had full power to remove the relator from the office of County Superintendent, whenever he became satisfied that the said relator was incompetent, or that he neglected the duties of his said office.

2d, That the said State Superintendent did become satisfied that the said relator neglected his duty as County Superintendent, and was incompetent for the proper performance thereof, and did therefore remove the said relator from the said office.

3d, That there being a vacancy in the office of County Superintendent of Common Schools for the County of Schuylkill, the State Superintendent had the power to fill said vacancy, and did fill the same, by the appointment of this defendant, who having been duly commissioned, and having accepted the office and entered upon its duties, is entitled to hold the same until his successor is duly chosen and qualified.

And as to all other matters and things contained in the suggestion, this defendant avers that the same are impertinent and irrelevant, and therefore do not require any other or further answer.

All of which matters and things alleged and contained in the foregoing answer, this defendant is ready to verify in such manner and form, and at such time as this Honorable Court shall order and direct.

Wherefore he prays judgment that it may be considered and adjudged by this Honorable Court, that the said office be allowed to him, the said defendant, and that he be dismissed and discharged by the said Court hereof, and from the premises in the said information and suggestion upon him, and that he be allowed his reasonable costs and charges expended in defending his suit in this behalf.

W. A. FIELD.

Commonwealth of Pennsylvania, ss.

William A. Field, the above named defendant, being duly sworn, doth depose and say, that the facts above by him set forth, are just and true to the best of his knowledge, remembrance, information and belief.

Sworn and subscribed before
me, this 17th day of December,
A.D. 1858.

W. A. FIELD.

DANL. H. SHOENER, *Prot.*
per S. C. Harris.

“A.”

PENNSYLVANIA,

Department of Common Schools,

HARRISBURG, Nov. 2d, 1858.

Sir:—You are hereby removed from the office of County Superintendent, for “neglect of duty and incompetency.” You will immediately deliver to your successor, W. A. Field, Esq., the books of “County Certificates,” and

“Provisional Certificates” in your hands, and the marginal references or “duplicates” of all certificates, of either kind, issued by you since the first Monday in June, 1857; together with all other official records or documents in your possession, or under your control, taking his receipt for the same in detail, upon the presentation of which at this Department, your arrearages of salary and Express charges will be adjusted.

Your obedient servant,

H. C. HICKOK,

Supt. Com. Schools.

To J. K. KREWSON, Esq., Minersville, Schuylkill Co., Pa.

PENNSYLVANIA,

Department of Common Schools,

HARRISBURG, Nov. 2d, 1858.

Sir:—You are hereby appointed County Superintendent of Schuylkill County, to fill the unexpired term of J. K. Krewson, removed. A formal commission will be sent you as soon as it can be executed. In the meantime, you will enter upon the discharge of your official duties, first calling upon Mr. Krewson and obtaining from him all books of certificates, and other official records or documents in his possession or under his control, receipting to him for the same, and forwarding a list thereof to this Department.

Resp’y yours,

H. C. HICKOK,


Supt. Com. Schools.

W. A. FIELD, Esq., Schuylkill Haven, Pa.

The Commonwealth of Pennsylvania.

Department of Common Schools,

To William A. Field, of Schuylkill.

 WHEREAS, J. K. Krewson has been removed from the office of County Superintendent for said County, now know you, that in conformity with the

Act of Assembly, entitled "An Act for the regulation and continuance of a system of Education by Common Schools," approved the eighth day of May, Anno Domini, one thousand eight hundred and fifty-four, I do by these presents appoint and commission you to be *County Superintendent of Common Schools*, in and for the said County of Schuylkill, *hereby* giving and granting unto you, full right and title to have and to execute all and singular, the powers and duties to the said office of County Superintendent of Common Schools, lawfully belonging, or in anywise appertaining, by virtue of the above recited Act of Assembly.

To have and to hold this commission and the office hereby granted unto you, the said William A. Field, for the term of one year and seven months, to be computed from the second day of November, Anno Domini one thousand eight hundred and fifty-eight, if you shall so long perform the duties of said office, according to law.

Given under my hand and the seal of the Department of Common Schools, at Harrisburg, this second day of November, in the year of our Lord one thousand eight hundred and fifty-eight.

HENRY C. HICKOK,
Superintendent of Common Schools.

DEMURRER AND JOINDER.

In the Court of Common Pleas of Schuylkill County.

THE COMMONWEALTH OF PENNSYLVANIA,
ex relatione Jonathan K. Krewson,

vs.

WILLIAM A. FIELD.

And now, December 18th, 1858, the answer of the said defendant having been read in open Court, the said Jonathan K. Krewson in behalf of the said Common-

wealth, (by his Attorneys, F. W. and J. Hughes and James H. Campbell,) who for the said Commonwealth prosecutes in this behalf, comes and saith, that the said answer of the said William A. Field, and the matter contained therein, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said Commonwealth from having or maintaining the aforesaid proceeding against him, the said William A. Field, and the said Commonwealth is not bound to answer the same, and this the said Commonwealth is ready to verify, wherefore for want of sufficient plea in this behalf, the said Jonathan K. Krewson by his attorneys aforesaid, prays judgment for the said Commonwealth, and that the said defendant be ousted and altogether excluded from the office of the County Superintendent aforesaid.

F. W. and J. HUGHES,
J. H. CAMPBELL,

for Krewson.

And now same day defendant saith, that his answer above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the Commonwealth from having or maintaining the aforesaid action thereof against the said defendant, and this the said defendant is ready to verify and prove as the Court shall award. Wherefore inasmuch as the said Commonwealth hath not answered the said plea, nor in any manner denied the same, the said defendant prays judgment, and that the said Commonwealth may be debarred from having or maintaining the aforesaid action thereof, against the said defendant.

ROBT. M. PALMER,
Att'y for Deft.

JUDGMENT OF THE COURT.

In the Court of Common Pleas of Schuylkill County.

THE COMMONWEALTH OF PENNSYLVANIA,
ex relatione Jonathan K. Krewson,

vs.

WILLIAM A. FIELD.

And now, December 18th, 1858, after suggestion and answer, and demurrer and joinder in demurrer, it is considered by the Court, that William A. Field, Esq., do not in any manner meddle or concern himself in and about the holding or exercising the said office of "The County Superintendent" in and for the County of Schuylkill, in the said suggestion specified, in virtue of the supposed commission by him mentioned in his answer or plea in bar aforesaid, but that the said William A. Field, Esq., be absolutely forejudged and excluded from holding or exercising the said office, and that the said Commonwealth recover costs taxed at, &c.

C. W. HEGINS,

Prest. Judge.

BRIEF OF THE ARGUMENT FOR THE PLAINTIFF IN ERROR.

The case presented involves a construction by the Court, of the seventh article of the 46th section of the Act of Assembly of the 8th May, 1854, with regard to the powers and duties of the State Superintendent of Common Schools.—*Stroud & Brightly's Purdon's Digest, for 1854, pl. 62, page 1067.*

"He shall have the power of removing any County Superintendent for neglect of duty, incompetency or immorality, and to appoint another in his stead until the next triennial Convention of Directors."

It is admitted by the pleadings, that the State Superintendent, being satisfied of the incompetency and neglect

of duty of the relator, Jonathan K. Krewson, undertook to remove him from the office of County Superintendent, and to appoint the defendant, William A. Field, to the said office, but it is objected that the power of removal was not rightly exercised, for want of a preliminary notice, specifications, trial and judgment against the relator.

The rule laid down by the State Superintendent in his "instructions," and referred to in the plaintiff's suggestion, providing for a notice, &c., in cases of complaint made to him against a County Superintendent, is prescribed by himself, for his own guidance, and may be waived or dispensed with at his own pleasure. It would have no proper applicability, where the existence of the causes of "incompetency and neglect of duty" was within the peculiar knowledge of the State Superintendent himself, and where no complaint was made to him by others, as for all that appears to the contrary, may have been the case in this instance.

The whole object of notice, trial, &c., to an incompetent, delinquent or immoral County Superintendent, must be to satisfy the mind of the State Superintendent, of the existence of one or more of these causes of removal.—The Act of Assembly vests in the State Superintendent the power of removal, to be exercised whenever he is satisfied of the existence of one or more of the specified causes, holding himself responsible for its faithful and proper exercise. There is no appeal provided from his decision, and no other tribunal by whom the existence of the causes of removal is to be ascertained.

It cannot be contended, that a previous prosecution and conviction of the County Superintendent in the criminal courts of the proper county, is required, before the State Superintendent can exercise his power of removal. Incompetency is not an indictable offence, neither is every species of immorality, which might render a County Su-

perintendent unfit for a proper discharge of the duties of his office.

This view is strengthened by a reference to the fortieth section of the Act of Assembly of 8th May, 1854, already referred to.—*See Stroud & Brightly's Purdon's Digest, page 1066, pl. 49.* By this section it is made the duty of the State Superintendent, if objection be made to the person returned as elected County Superintendent, to hear evidence in regard to his election and *qualifications*, and to issue the commission to the person *properly qualified*, who shall have received the highest number of votes. For this purpose the names of all the candidates voted for in the triennial convention of directors, are certified to the State Superintendent, and he is to judge from the evidence presented to him, not only of the election, but also of the qualifications of the candidates, and to issue his commission accordingly. It evidences the intention of the Legislature to submit the qualifications of County Superintendents, before commission is issued, as well as the existence of “incompetency and neglect of duty” afterwards, as causes of removal, to the judgment of the State Superintendent. That judgment having been exercised in this case, the relator has no just cause of complaint, nor will the Courts interfere to relieve him.

